

AGENDA MEMO

CITY COUNCIL MEETING DATE: JULY 12, 2006

DEPARTMENT: PLANNING AND DEVELOPMENT

ITEM DESCRIPTION: VAR-13245 - APPLICANT/OWNER: WARMINGTON HOMES OF NEVADA

**** CONDITIONS ****

The Planning Commission (6-0 vote) and staff recommend DENIAL.

Planning and Development

1. All development shall conform to the Conditions of Approval for the Cliff's Edge Plan Development Standards, except as amended by this request.
2. Conformance to the Conditions of Approval for approved Tentative Map (TMP-11447).
3. This Variance shall expire two years from the date of final approval, unless it is exercised or an Extension of Time is granted by the City of Las Vegas.
4. Per Section R302.1 of the Unified Building Code, any projection extending into the three-foot fire separation distance, measured from the property line, shall have not less than one-hour fire-resistive construction on the underside and shall not extend to a point closer than two feet from the property line.

Public Works

5. The submitted Drainage Plan and Technical Drainage Study must be approved by the Department of Public Works prior to the recordation of a map for this site and shall address the typical lot drainage detail of a two foot side yard setback. Provide and improve all drainageways as recommended in the approved drainage plan/study.

**** STAFF REPORT ****

APPLICATION REQUEST

This is an Appeal filed by the applicant from the Denial by the Planning Commission of a request for a Variance to allow 220 single family dwellings with side yard setbacks of two feet where three feet is the minimum setback required on 20.9 acres at the southwest corner of Hualapai Way and Farm Road.

EXECUTIVE SUMMARY

The applicant has provided a letter of approval from the Cliff's Edge Design Review committee. The applicant's justification letter indicates that this request will not adversely affect surrounding properties. However, there are no hardships imposed by the site's physical characteristics, and this request is outside the realm of state law for granting of Variances.

BACKGROUND INFORMATION

A) Property History

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|----------|---|
| 02/05/03 | The City Council approved an Annexation (A-0035-02) of over 1056 acres, which included the subject property. The Planning Commission recommended approval on 09/26/02. The effective date of this annexation was 02/14/03. |
| 07/16/03 | The City Council approved a request for a Rezoning (ZON-2184) from U (Undeveloped) Zone [PCD (Planned Community Development) General Plan Designation] to PD (Planned Development) Zone on approximately 704 acres, which included a portion of the subject property. The Planning Commission and staff recommended approval on 06/12/03. |
| 02/18/04 | The City Council approved a Development Agreement (DIR-3451) between the City of Las Vegas and Cliff's Edge, Limited Liability Company, for the Cliff's Edge Master Planned Community. The Planning Commission and staff recommended approval on 01/08/04. |
| 03/11/04 | The Planning Commission approved the Cliff's Edge Parent Tentative Map (TMP-3798) of 923 acres, which included the subject property. This Tentative Map serves as the guide for the further subdivision of land within the Cliff's Edge Master Development Plan area. The staff recommended approval. |

- 08/03/05 The City Council approved a Major Modification (MOD-6279) to the Cliff's Edge Master Development Plan to retaining walls in conjunction with interior perimeter walls (i.e. "product" walls) to be higher than seven feet. The Planning Commission and staff recommended approval on 05/26/05.
- 03/23/06 The Planning Commission approved a Tentative Map for a 220 lot single family residential subdivision on the subject site.
- 06/08/06 The Planning Commission voted 6-0 to recommend DENIAL (PC Agenda Item #19/ar).

B) Pre-Application Meeting

- 08/19/05 Setback requirements for this development were discussed. The required setback for the side yard is three feet. The eaves for all lots will encroach one foot into the setback.

C) Neighborhood Meetings

A neighborhood meeting is not required for this application nor was one held.

DETAILS OF APPLICATION REQUEST

A) Site Area

Gross Acres: 20.9
Net Acres: 18.9

B) Existing Land Use

Subject Property: Undeveloped
North: Undeveloped [Approved Site Development Plan Review (SDR-4370)]
South: Undeveloped
East: Clark County/Undeveloped
West: Undeveloped

C) Planned Land Use

Subject Property: PCD (Planned Community Development)
North: PF (Public Facilities)
 PCD (Planned Community Development)
South: PCD (Planned Community Development)
East: Clark County/R (Rural Density Residential)
West: PROS (Parks/Recreation/Open Space)

D) Existing Zoning

Subject Property: PD (Planned Development)
North: PD (Planned Development)/ U (Undeveloped) Zone [PCD (Planned Community Development) General Plan Designation] under Resolution of Intent to R-PD7 (Residential Planned Development – 7 units per acre)
South: PD (Planned Development)
East: Clark County
West: PD (Planned Development)

E) Cliff's Edge Land Use Designation

Subject Property: M (Medium Density Residential)
North: ML (Medium Low Density Residential)
South: L (Low Density Residential)
East: Not a part of Cliff's Edge
West: PF (Public Facilities)

F) General Plan Compliance

This site is located on the Centennial Hills Sector Plan Map of the General Plan. The Centennial Hills Sector Plan designates this site as PCD (Planned Community Development). The site is zoned PD (Planned Development), which is in compliance with the General Plan. The site is designated as RSL (Residential Small Lot) within the Cliff's Edge Master Development Plan.

<i>SPECIAL DISTRICTS/ZONES</i>	<i>Yes</i>	<i>No</i>
Special Area Plan	X	
Cliff's Edge	X	
Special Overlay District		X
Trails	X	
Rural Preservation Neighborhood		X
Development Impact Notification Assessment		X
Project of Regional Significance		X

Cliff's Edge Master Plan:

The City Council approved a master development plan entitled the "Cliff's Edge Master Development Plan and Design Guidelines" on 03/19/03.

The Cliff's Edge Master Development Plan designates the subject site as RSL (Residential Small Lot). This category provides for the development of up to 15 dwelling units per gross acre. Product types include, but are not limited to, senior housing, duplexes, compact lots, condominiums, townhomes, apartments, cluster and zero lot live developments with a maximum of two stories.

Multi-Use Non-Equestrian (Transportation) Trail:

A Multi-use Transportation Trail is required along the western portion of the Hualapai Way street frontage, as shown on Map 2 of the Transportation Trails Element of the Master Plan. A multi-use transportation trail refers to paved trail paths separated from the roadway and designed for the exclusive use of bicyclists, pedestrians, and other users of non-motorized vehicles. A multi-use transportation trail consists of a five-foot transition strip and a five-foot private landscaped corridor that are separated by a ten-foot public transportation trail path. Provision of the right-of-way for, and construction of, the Multi-Use Non-Equestrian (Transportation) Trail, will be the responsibility of the developers of the Cliff's Edge project.

ANALYSIS

A) Zoning Code Compliance

Development Standards

Title 19.06.050 stipulates that the development standards within a PD (Planned Development) zoning district are established by the Master Development Plan. The development standards for the Cliff's Edge area are established through the approved Cliff's Edge Master Development Plan, and with the approval of proposed modifications to the area's land use categories.

Section 3.2.3 of the Cliff's Edge Master Development Plan requires a side yard setback of three feet within the RSL (Residential Small Lot) land use designation. The applicant is proposing to reduce the setbacks of all lots within the subdivision to two feet to allow roof eaves to encroach into the side setback area.

B) General Analysis and Discussion

The deviation from the required three-foot setback is minimal and any affect on the surrounding area would be minimal. However, the hardship is self-imposed and staff cannot make a finding for approval.

FINDINGS

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature."

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

The criteria in Title 19 for granting a variance are promulgated from common law in the State of Nevada. More specifically, a “practical difficulty” or “hardship” as stated above has special meaning under Nevada law. The courts have interpreted a hardship to mean that a “regulation to property greatly decreases or practically destroys its value for any permitted use, so as to deprive the owner of the land of all beneficial use or that land is virtually useless as it is presently zoned.” [*Enterprise Citizens v. Clark County Commissioners* (1996).]

Based on the relegated criteria above, it does not appear that there exists a legal hardship to warrant the grant of a Variance. It is recommended, therefore, that this application be denied. This recommendation of denial is based on the findings below, only one finding of which warrants the denial of a Variance.

- **No evidence is provided that a hardship exists to warrant a variance in the required setback.** The onus for presenting such evidence is placed on the applicant, the person allegedly aggrieved by the requirement.
- **The hardship is self-imposed.** The applicant can redesign the development plans to conform to the setback requirements.
- **Use of the property is not denied.** The property has no exceptional narrowness, shallowness, shape, exceptional topographic conditions or other extraordinary and exceptional situation or conditions attributed to the property. The question is one of whether the property could be developed for any use that would not require a Variance. The property is residential, and denial of this variance will not preclude the residential development of this site.

No evidence of a unique or extraordinary circumstance has been presented, in that the applicant has created a self-imposed hardship by designing the development with buildings that do not conform to the setback requirements. An alternative design would allow conformance to the Cliff’s Edge Development Standards.

In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

NEIGHBORHOOD ASSOCIATIONS NOTIFIED

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ASSEMBLY DISTRICT 13

SENATE DISTRICT 9

NOTICES MAILED 66 by City Clerk

APPROVALS 0

PROTESTS 0